

CERTIFIED FOR PUBLICATION

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

ROGELIO HERNANDEZ,

Plaintiff and Appellant,

v.

CHIPOTLE MEXICAN GRILL, INC.,

Defendant and Respondent.

B216004

(Super. Ct. No. BC373759)

ORDER MODIFYING OPINION

[NO CHANGE IN JUDGMENT]

THE COURT:

The opinion filed on August 21, 2012, and certified for publication by order filed on August 30, 2012, is modified as follows:

On page 4, the first full paragraph, which begins with “Chipotle submitted 57 declarations . . . ,” is replaced in its entirety with the following paragraph:

Chipotle also submitted the declaration of Human Resource Director Brian Brown, who explained Chipotle’s organization and methods of operation. He declared in part: “Because crew members are paid for meal and rest breaks, they do not have a financial incentive to record their breaks accurately and occasionally fail to do so. . . . [I]f a crew member records the start of a meal break and forgets to record the time it ends, the meal break is still fully paid.” Several Chipotle crew members and managers

corroborated Mr. Brown's testimony that employees do not always remember to "clock-out" before going on a break. For example, David Pineda, the service manager at Chipotle's Hawthorne location testified, "Although we emphasize that employees should clock in and out for their meal and rest periods, I am aware that some employees do not always do so. Because the company pays employees for their meal and rest period time, employees do not always think to clock-out before going on a break."

This modification effects no change in judgment.

BIGELOW, P. J.

FLIER, J.